TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 237.

JOHN F. HARTRANFT, COLLECTOR OF CUSTOMS FOR THE DISTRICT OF PHILADELPHIA, PLAINTIFF IN ERROR,

vs.

LAMONT DU PONT.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED JUNE 22, 1883.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

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vs.

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1 UNITED STATES,
Eastern District of Pennsylvania, sct:

The President of the United States to the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, greeting:

Because that in the record and process and also in the rendering of judgment in a suit before you, between Lamont du Pont, plaintiff, and John F. Hartranft, collector of customs for the district of Philadelphia, defendant, in a plea of trespass in the case, a manifest error has intervened to the great damage of the said John F. Hartranft, collector, &c., as in his complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if judgment thereof be given, then under your seal, you do distinctly and openly send the record and process in the suit aforesaid with all things concerning them and this writ, so that you have the same before the honorable the justices of the Supreme Court of the United States, sitting at Washington, D. C., on the second Monday of October next, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Philadelphia, this second day of May, A. D. one thousand eight hundred and eighty-three, and in the one hundred and seventh year of the Independence of the said United States.

[SEAL.] SAMUEL BELL,
Clerk of Circuit Court, U. S.

2 THE UNITED STATES OF AMERICA, *ss:*

To Lamont du Pont, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit wherein John F. Hartranft, collector of customs for the district of Philadelphia plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in said writ of error mentioned, shall not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand this 3rd day of May, in the year of our Lord one thousand eight hundred and eighty-three.

WM. BUTLER, *Judge.*

2½ I hereby accept service of the within citation for L. du Pont, and the clerk will please enter my appearance for him.

FRANCIS J. GOWEN.

MAY 5, 1883.

3 In the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit.

LAMONT DU PONT
vs.
JOHN F. HARTRANFT, COLLECTOR OF CUSTOMS for the district of Philadelphia. } No. 32. October sess., 1881.

UNITED STATES OF AMERICA,
Eastern district of Pennsylvania, ss:

Pleas and proceedings before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit of October session, 1881, No. 32.

It is thus contained:

Be it remembered that on the 2nd day of November, A. D. 1881, the defendant, by his attorney, John K. Valentine, esq., appears in open court and presents his petition for a writ of certiorari to the court of common pleas No. 2, for the county of Philadelphia, which said petition being read is in the words following, to wit:

4 In the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit.

The petition of John F. Hartranft, collector of customs for the district of Philadelphia, respectfully represents:

That a suit has been commenced by summons case against him as defendant by Lamont du Pont in the court of common pleas No. 2, for the County of Philadelphia, in the State of Pennsylvania, to September term, 1881, No. 531.

That the said suit is brought on account of an act done by him under the revenue laws of the United States, as collector of the customs for the district of Philadelphia; the said suit being to recover a certain sum of money paid for and on account of the said plaintiffs, to the said defendant as collector aforesaid, as duties on certain merchandise.

Your petitioner respectfully prays that the said cause may be entered on the docket of your honorable court, and proceeded in as a cause therein originally commenced, and that a writ of certiorari be immediately issued by the clerk of your honorable court, to the said court of common pleas No. 2, for the county of Philadelphia, to send to the said circuit court of the United States the record and proceedings in said cause, according to the provisions of the act of Congress in such case made and provided.

And he will ever pray, &c.

J. F. HARTRANFT, *Coll.*

John F. Hartranft, being duly sworn, says that the facts set forth in the above petition are true, to the best of his knowledge and belief.

J. F. HARTRANFT.

Sworn and subscribed before me this 31st day of October, 1881.

[SEAL.] E. H. BAILEY,
Notary Public.

I hereby certify that, as counsel for the above petitioner, I have examined the proceedings against him, and carefully inquired into all the matters set forth in the above petition, and that I believe the same to be true.

JOHN K. VALENTINE,
Att'y for Def't.

(Indorsed:) No. 32. October sessions, 1881. Circuit court United States, eastern district of Pennsylvania, in the third circuit. Lamont du Pont vs. John F. Hartranft, collector, &c. Petition for certiorari. John K. Valentine, attorney for petitioner. Filed November 2, 1881.

Whereupon a writ of certiorari issued in the following words, to wit:

5 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, set:

The President of the United States to the honorable the judges of the court of common pleas No. 2 for the county of Philadelphia and State of Pennsylvania, greeting:

Whereas lately in your said court of common pleas No. 2, suit was brought against John F. Hartranft, collector of customs for the district of Philadelphia, by Lamont du Pont, of your September term, 1881, No. 531, which said suit, as it is said, is still pending before you in the said court of common pleas No. 2, undetermined; and whereas on the application of the said John F. Hartranft, collector, &c., to the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, on a suggestion supported by proper evidence, that the said suit was brought on account of an act done by him, under color of his office as collector of customs for the district of Philadelphia, the said suit having been brought to recover certain moneys paid by the said plaintiff to the said John F. Hartranft, collector, &c., aforesaid, for duties on certain merchandise claimed to be due and owing from the said plaintiff to the United States of America, and praying that a writ of certiorari may be immediately issued by the clerk of the said circuit court of the United States, directed to the said court of common pleas No. 2, to send to the said circuit court of the United States, the record and proceedings in the said cause, according to the provision of the act of Congress, in such case made and provided.

Wherefore you are hereby commanded to transmit, under your seal, the record and proceedings of the said suit, with all things thereunto relating, unto the said circuit court of the United States, to be holden at Philadelphia, for the eastern district of Pennsylvania, in the third circuit, on the first Monday of November instant, plainly and distinctly, in as full and ample manner as it now remains before you, together with this writ, so that the said circuit court of the United States may be able therein to proceed and do what shall appear of right ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Philadelphia, this second day of November, A. D. 1881, and in the 106th year of the Independence of the United States.

[SEAL U. S. CIRCUIT COURT E. DIST. OF PA.]

SAMUEL BELL,
Clerk of Circuit Court, U. S,

5½ (Indorsed:) No. 32. October sess. 1881. Circuit court, U. S. Du Pont vs. Hartranft, collector, &c. Writ of certiorari. Filed November 21, 1881.

6 *Exemplification.*

PHILADELPHIA COUNTY,
State of Pennsylvania, sct:

Among the records and proceedings of the court of common pleas No. 2, for the county of Philadelphia, State of Pennsylvania, the following may be found as matter of file and of record at No. 531, Sept. term, 1881, to wit:

Docket entries, September term, 1881.

(On the margin:) F. J. Gowen 531. J. K. Valentine 10, 26, '81.

Lamont du Pont vs. John F. Hartranft.
Sum's case. Exit. Oct. 17, 1881. Ret. 1st Mon., Nov. 1, 1881. Served. Nov. 5, 1881. Certiorari from circuit court of U. S. brought into office.

Certified from the record this 14th day of November, A. D. 1881.
[SEAL C. P.] F. H. SMITH,
Pro Proth'y.

7 LAMONT DU PONT *vs.* JOHN F. HARTRANFT. } C. P., No. Sept., 1881. No.

Issue summons case as above. Returnable 1st Mon. of November, 1881.

FRANCIS J. GOWEN.

OCT. 17, 1881.

To Proth'y.

(Endorsed:) No. 531. Sept., 1881. C. P. No. 2. Du Pont vs. Hartranft. Præcipe. Sum's case. Francis J. Gowen. Filed Oct. 17, 1881.

8 *Summons.*

COUNTY OF PHILADELPHIA, *ss:*

The Commonwealth of Pennsylvania, to the sheriff of the county of Philadelphia, greeting:

We command you, that you summon John F. Hartranft, late of your county, so that he be and appear before our judges at Philadelphia, at our court of common pleas No. 2, for the county of Philadelphia, to be holden at Philadelphia, in and for said county of Philadelphia, the first Monday of November next, there to answer Lamont du Pont, of a plea of trespass on the case, etc. And have you there this writ.

Witness the honorable J. I. Clark Hare, president of our said court, at Philadelphia, the seventeenth day of October, in the year of our Lord one thousand eight hundred and eighty-one.

[SEAL COURT, C. P.] F. C. MANDERSON,
Pro Prothonotary.

9 (Indorsed:) 531. Sept. term, 1881. C. P., No. 2. Lamont du Pont vs. John F. Hartranft. Summons case. Francis J. Gowen.

Served John F. Hartranft, by giving to him, October 24, 1881, a true and attested copy of the within writ and making known to him the contents thereof. So answers.

THOS. H. STOKLEY,
Deputy Sheriff.
ENOCH TAYLOR, *Sheriff.*

10 LAMONT DU PONT
vs.
JOHN F. HARTRANFT. } C. P., No. 2. Sept. t., 1881. No. 531.

The proth'y will enter my appearance for the defendant in the above case.

JOHN K. VALENTINE,
Att'y for Def't.

To Proth'y, C. P.

10, 28, '81.

(Endorsed:) 531. Sept. t., 1881. C. P., No. 2. Lamont du Pont vs. John F. Hartranft. Order for appearance. Filed October 26, 1881. John K. Valentine, att'y for def't.

11 And afterwards, to wit, on the 4th day of March, A. D. 1882, the plaintiff, by his attorney, Francis I. Gowen, esq., comes into our said court here and files his narr., which, being read, is as follows, to wit:

In the circuit court of the United States in and for the eastern district of Pennsylvania.

LAMMOT DU PONT
vs.
JOHN F. HARTRANFT.

John F. Hartranft, late of the district aforesaid, was summoned to answer Lammot du Pont of a plea of trespass on the case, &c.

Whereupon the said plaintiff, by Francis I. Gowen, his attorney, complains as follows:

The said plaintiff, at the time of the seizure and payment hereinafter referred to, was and still is the owner of a certain wooden boat called the Repauno, of the dimensions following: Tonnage, $3\frac{31}{100}$ tons; length from out to out, 8ft.; width of beam from out to out, 8 ft.; depth of hold from gunwale to keel, 3 ft. 9 inches; draft of water, 2 ft. 1 inch;

12 which said boat was an open one, without deck as to about one-third of the length, and as to the remaining two-thirds, was decked over as a measure of safety, being too small to live on the Delaware River in stormy weather as an open boat. The said boat was propelled by a small steam engine with a cylinder of 7 inches stroke of piston and 5 inches diameter, and was used for carrying the said plaintiff and the superintendent of the works belonging to the plaintiff, hereinafter referred to, from Chester, in the State of Pennsylvania, across the Delaware River to Thompson's Point, in the State of New Jersey, where are situated certain works for the manufacture of powder, &c., owned and operated by the said plaintiff, and back again, and was occasionally used for carrying

across the said river one or more of the employés of said work and small quantities of supplies intended for the use and used at said works. The said boat was not engaged in the carriage of transportation of goods or passengers for hire or reward, nor were any freight or passengers transported or carried by it save as aforesaid, nor did said boat navigate
13 the Delaware River or any navigable waters of the United States save as aforesaid.

On the 20th day of August, A. D. 1880, and for a considerable period thereafter the said boat was engaged as aforesaid in the navigation under steam of said Delaware River, without having any certificate of inspection in force and without having undergone the inspection required by the inspection laws of the United States, in the case of vessels embraced within the provisions of said laws.

The said defendant, John F. Hartranft, was the collector of customs of the United States in and for the port of Philadelphia, State of Pennsylvania, and district aforesaid, and pretending and alleging that by reason of the non-inspection as aforesaid of said boat, the said plaintiff had become liable to the fine imposed by section 4499 of the Revised Statutes of the United States, and that the said vessel was by said section liable to seizure for the enforcement of the said fine, he, the said John F. Hartranft, intending to enforce the payment by said plaintiff of said fine of $500, wrongfully and by force seized and took into his possession and
14 control, to wit, in the district aforesaid the said boat, and kept and detained the same and refused to surrender it to plaintiff, though requested so to do, without payment being first made by said plaintiff to him, the said John F. Hartranft, of the said sum of $500, whereby the said plaintiff was forced and compelled, in order to regain possession of the said boat, to pay the said defendant the said sum of $500.

And thereupon, to wit, on the 5th day of April, A. D. 1881, to wit, at the district aforesaid, the plaintiff paid the said sum of $500 for the purpose of recovering possession of his said boat, and thereafter the said plaintiff gave the said defendant due notice in writing of his, the said plaintiff's, grounds of objection to the decision of the said defendant in the premises and of the said plaintiff's intention to appeal therefrom to the Secretary of the Treasury, and in pursuance of such notice the said plaintiff duly appealed to the Secretary, and the said appeal was afterwards rejected, and plaintiff avers that the said defendant received the said sum of $500, to the plaintiff's use and to be paid to the plaintiff when requested,
15 whereby and by reason of the said sum being wholly unpaid an action hath accrued to the plaintiff to demand and have from the defendant the said sum of $500, yet the defendant although often requested hath not paid the said sum or any part thereof to the plaintiff, but to do this hath wholly, refused and still refuses to the damage of the said plaintiff one thousand dollars, and therefore he brings his suit.

FRANCIS I. GOWEN,
For Pl'ff.

MARCH 4, 1882.

(Endorsed:) Circuit court of the United States, eastern district of Penna., October sess., 1881, No. 32. Du Pont *vs.* Hartranft. Narr. Enter rule on def't to plead in two weeks or judgment sec. reg. Filed March 4, 1882. Francis I. Gowen.

16 And afterwards, to wit, on the 15th day of March, A. D. 1882, the defendant, by his attorney, John K. Valentine, esq., comes into our said court here and files his plea, which is in the words following, to wit:

C. C. U. S., E. D. of Pa., 32, Oct. sess., 1881.

DU PONT
vs.
HARTRANFT.

And now, the said defendant, by his attorney, John K. Valentine, esquire, comes and defends the wrongs and injury when, etc., and says that he did not undertake or promise in manner and form as the said plaintiff has above thereof complained against him, and of this he puts himself upon the country.

JOHN K. VALENTINE,
Att'y for Defendant.

(Endorsed:) 32. Oct. sess., 1881. C. C. U. S. E. D. of Pa. Du Pont vs. Hartranft. Plea. Filed March 15, 1882. J. K. Valentine, att'y for def't.

17 And thereupon it is ordered that a jury come to try the issue joined in this cause.

And afterwards, to wit, on the 2nd day of April, A. D. 1883, came the parties aforesaid, and the jurors of the jury aforesaid being called likewise came, to wit:

1. Edward S. Silliman.
2. Thomas Johnston.
3. John M. Driver.
4. J. Warren Ingersoll.
5. William T. Kirk.
6. William H. Hulick.
7. Alfred W. Allen.
8. Theophilus U. Neff.
9. Henry S. Cope.
10. Jackson McAbee.
11. Wesley White.
12. Seymour Raymond.

Who are duly empanelled, returned, chosen, tried, and sworn or affirmed to speak the truth in the issue joined, &c.

And on the day and year last aforesaid the jurors aforesaid, upon their oaths or affirmations aforesaid, respectively do say that they find for the plaintiff and assess the damages at five hundred dollars ($500) with point of law reserved.

18 *Point reserved*

C. C. U. S., Oct. sess., 1881.

LAMONT DU PONT
vs.
JOHN F. HARTRANFT, COLLECTOR, &C. } No. 32.

LAMONT DU PONT, having been called by the plaintiff, testified as follows:

In April, 1881, I resided in Wilmington, Delaware. Have powder works opposite Chester; I am the owner of a wooden boat—the Rapanno—and was at that time. Her dimensions are 38 feet 11½ inches in length, out and out. Length of water-line, 37 feet; length of keel, 34 feet;

width of beam, 8 feet; inside timbers, 6 feet 9 inches; depth of hold from gunwale to keel, 3 feet 9 inches; draft of water, 2 feet 1 inch. It was an open boat without any covering, and had a small engine and boiler. Now the front portion is boarded over. It was to transport me and my superintendent across the Delaware. When she was seized she was sailing without inspection papers. I paid a fine of $500 to get possession of her to the collector of the port. I made a protest and filed an appeal to
19 the Secretary, as required by law.

Cross-examined.

I owned her in the shape she is now about 18 months. I put a new boiler and engine in her. She had them when I bought her. She was built in Wilmington, Delaware, and had been used a few trips as a pleasure boat. She is about 5 or 6 years old. I have had her about 3 years. I have used her the whole time to carry myself and superintendent from Thompson's Point to Chester. Thompson's Point is about 2 miles from Chester, on the other side of the Delaware River. When not in use she lies at Thompson's Point. Myself and superintendent, when he lived at Chester, occasionally took across workingmen. We have had nine or ten on her. I suppose she would carry 25 if the water was smooth. She had been inspected, and her papers had expired, and she had no papers at the time. This time it was an omission on my part which was not intentional. Cannot say whether the engineer was licensed.

Re-examined.

She never carried any freight or passengers for hire.

20 The jury found the vessel to be of the size and description, and to have been used as stated in the foregoing testimony, and the court reserved the point as follows:

If the court should be of the opinion that a vessel of the size and description, and used as found by the jury, is liable to inspection under the statutes of the United States, the verdict and judgment to be entered for the defendant non obstante veredicto; and if the court should be of the opinion that such a vessel is not liable to such inspection then, the judgment to be entered for the plaintiff as the verdict.

21 And afterwards, to wit, on the 4th day of April, A. D. 1883, the defendant, by John K. Valentine, esq., his attorney, comes into our said court here and files a motion for judgment for defendant non obstante veredicto, which is as follows, to wit:

C. C. U. S. Oct. sess., 1881.

LAMONT DU PONT
vs.
JOHN F. HARTRANFT, COLLECTOR, &C. } No. 32.

And now, to wit, April 4th, 1883, comes John K. Valentine, esq., attorney for defendant, and moves for a judgment for defendant in the above case non obstante veredicto, upon the point reserved by the court.

(Endorsed:) 32. October sess., 1881. C. C. U. S. Du Pont vs. Hartrauft. Motion for judgment for defendant non obstante veredicto. Filed April 4, 1883. John K. Valentine, att'y for def't.

22 And afterwards, to wit, on the 18th day of April, A. D. 1883, this cause coming on for argument on motion for judgment for defendant non obstante veredicto was argued by counsel for the respective parties, whereupon the court deny the motion for judgment for defendant, and order judgment to be entered on the verdict in favor of plaintiff and against the defendant for the sum of five hundred dollars ($500).

Whereupon judgment is entered accordingly.

23 In the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit. October session, 1881, No. 32.

LAMONT DU PONT
vs.
JOHN F. HARTRANFT.

Be it remembered that in the sessions of October, A. D. 1881, came the said plaintiff into the said court, and impleaded the said defendant in a certain plea of trespass on the case, &c., in which the said plaintiff declared (prout narr.) and the said defendant pleaded (prout pleas). And thereupon issue was joined between them.

And afterwards, to wit, at a session of said court, held at the district aforesaid before the honorable William McKennan, judge of the said circuit court of the United States, and the honorable William Butler, judge of the district court of the United States, on Monday, the second day of April, A. D. 1883, the aforesaid issue between the said parties came to be tried by a jury of the said district for that purpose duly empannelled (prout list of jurors), at which day came as well the said plaintiff as the said defendant, by their respective attorneys; and the jurors of the jury aforesaid impannelled to try the said issue being also called, came, and were then and there in due manner chosen and sworn or affirmed to try the said issue; and upon the trial the counsel of the said plaintiff called.

24 L. DU PONT, having been sworn, testified as follows: I am the plaintiff in this case. In April, 1881, and previous thereto, I resided at Wilmington, Delaware. I was then and am now engaged in the business of manufacturing powder. My works are located at Thompson's Point, New Jersey, almost opposite Chester, Pennsylvania. I am the owner of a wooden boat called the Repanno; I owned her in 1881 and previous thereto; her dimensions are as follows: Length from out to out, 38 feet 11 and one-half inches; length at water-line, 37 feet; length of keel, 34 feet; width of beam, 8 feet; width inside timbers, 6 feet 9 inches; depth of hold from gunwale to keel, 3 feet 9 inches; draft of water, 2 feet 1 inch; engine, 5 inches diameter of cylinder, 7 inches stroke of piston. She was, when I got her, an open boat, without any covering. I had front part boarded over as she used to dip under in rough water. The boat has a small engine and boiler. She has been, ever since I purchased her, and is now, used to carry me and my superintendent from Chester to Thompson's Point, across the Delaware River. She would also sometimes

25 carry our supplies and tools for our workmen, and, very rarely, some of the workmen who wanted to go to Chester would be carried over.

This boat was seized by the revenue officers; at the time of the seizure she was sailing without having inspection papers; I came to Philadelphia and paid a fine of $500 imposed against me; I paid it to the deputy collector; I paid it under protest; I afterwards filed a written protest and notice of intention to appeal to Secretary of Treasury; I also filed appeal to Secretary of Treasury, which appeal was rejected.

Cross-examination:

I have owned the boat in present shape about 18 months; I put new engine and boiler in her after I bought her; she had boiler and engine when I bought her; she was built in Wilmington; had been used before I bought her for a few pleasure trips; she is about 5 or 6 years old; I have had her for about three years; I have used her the entire time to carry myself and superintendent from Chester to Thompson's Point and back; Thompson's Point is about 2 miles below Chester on other side of river; when not in use lies at Thompson's Point; a few times
26 workmen were taken across river in her; we have carried 9 or ten in her at one time; she could float 25 if water were smooth and if there were space enough for them; she had been inspected, but papers had run out; I had not let them expire for purpose of testing the question whether she was liable to inspection; it was an omission; I cannot say whether the engineer was licensed.

Re-examination:

She never carried any freight or persons for hire.

WILLIAM D. SMITH sworn: Am deputy collector of customs for port of Philadelphia; Mr. Du Pont paid the fine of $500 on April 6th, 1881; filed written protest and notice of intention to appeal on April 16th, 1881; appealed to Secretary of Treasury on May 4, 1881; the appeal to Secretary was rejected.

Closed; defendant offers no evidence.

Whereupon the jury found the vessel to be of the size and description, and to have been used as stated in the foregoing testimony, and for
27 the plaintiff in the sum of five hundred dollars, subject to the opinion of the court upon the following point of law reserved:

If the court should be of the opinion that a vessel of the size and description, and used as found by the jury, is liable to inspection under the statutes of the United States, the verdict and judgment to be entered for the defendant non obstante veredicto; and if the court should be of opinion that such a vessel is not liable to such inspection, then the judgment to be entered for the plaintiff, as the verdict, for the sum of five hundred dollars with interest from the fifth day of April, 1881.

And afterwards, to wit, on the eighteenth day of April, 1883, the learned court entered judgment for the plaintiff aforesaid, upon the verdict aforesaid, for the sum of five hundred dollars, with interest from the fifth day of April, 1881.

28 And thereupon the counsel for the said defendant did then and there except to the aforesaid judgment and opinion of the said court, and inasmuch as the said judgment and opinion, so excepted to, do not appear upon the record—

The said counsel for the said defendant did then and there tender this

bill of exceptions to the said judgment and opinion of the said court, and requested the seal of the judge aforesaid should be put to the same, according to the form of the statute in such case made and provided. And thereupon the aforesaid judge, at the request of the said counsel for the defendant, did put seal to this bill of exceptions, pursuant to the aforesaid statute in such case made and provided, this first day of May, A. D. 1883.

W. McKENNAN. [L. S.]

(Indorsed:) 32. Oct. sess., 1881. Circuit court United States, eastern district of Pennsylvania. Bill of exceptions, Lamont du Pont vs. John F. Hartranft. Presented Ap'l 28, 1'83. W. McK., cir. J. Agreed to. F. I. Gowen. Filed May 1, 1883.

29 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, set:

I, Samuel Bell, clerk, do hereby certify the foregoing to be a true and faithful copy of the record and proceedings of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, in a certain suit therein lately depending between Lamont du Pont, plaintiff, and John F. Hartranft, collector of customs for the district of Philadelphia, defendant.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court at Philadelphia this 12th day of June, A. D. 1883, and in the 107th year of the Independence of the United States.

[SEAL.] SAMUEL BELL,
Clerk Circuit Court U. S.

(Indorsement on cover:) No. 237. John F. Hartranft, collector of customs for the district of Philadelphia, plaintiff in error, vs. Lamont du Pont. E. Pennsylvania C. C. U. S. Filed 22d June, 1883.

Supreme Court U.S.
FILED
APR 19 1886
JAMES H. McKENNEY,
CLERK.

118-223

Supreme Court of the United States.

OCTOBER TERM, 1885.

JOHN F. HARTRANFT, Collector, &c.,
vs.
LAMONT DU PONT. } No. 237.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Brief for the Plaintiff in Error.

Supreme Court of the United States.

OCTOBER TERM, 1885.

JOHN F. HARTRANFT, Collector, &c.,
vs.
LAMONT DU PONT. } No. 237.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Brief for Plaintiff in Error.

This is an action brought by the defendant in error in the court of common pleas, No. 2, of Philadelphia, and thence removed by *certiorari* to the circuit court of the United States for the eastern district of Pennsylvania (pp. 2, 3), to recover back the sum of $500, which had been exacted by the plaintiff in error from the defend-

ant in error under section 4499, Revised Statutes, as the penalty for failing to have a certain steamboat inspected as required by law, and which sum defendant in error was compelled to pay in order to release the said steamboat from the seizure under which it had been placed by the said plaintiff in error in consequence of said alleged violation of the inspection law.

To the declaration (pp. 5, 6) the defendant pleaded *non assumpsit* (p. 7).

At the October session, 1881, the issue was tried and a verdict rendered for the plaintiff, subject to the following case:

The plaintiff resided at Wilmington, Delaware, and was a manufacturer of powder. His works were at Thompson's Point, New Jersey, almost opposite Chester, Pennsylvania. The plaintiff and his superintendent were accustomed to cross the river Delaware in a small boat propelled by an engine with a seven-inch stroke, and sometimes supplies and tools for plaintiff's workmen, and, very rarely, workmen would be carried

across the river in this boat. The dimensions of the boat were, 38 feet 11½ inches in length, out and out; length of water line, 37 feet; length of keel, 34 feet; width of beam, 8 feet; inside timbers, 6 feet 9 inches; depth of hold from gunwale to keel, 3 feet 9 inches; draught of water, 2 feet 1 inch (pp. 7–8).

Plaintiff had owned the boat in present snape about eighteen months, and put a new engine and boiler in her after he bought her. She was built in Wilmington, and had been used for pleasure trips, but since plaintiff bought her to carry him and his superintendent to and fro between Chester and Thompson Point, and as many as nine or ten have been carried in her, and she could float twenty-five in smooth water if there was space enough for them. She had been inspected, but her papers had been allowed "to run out," but accidentally and not for the purpose of testing the question whether she was liable to inspection.

It also appeared that Mr. Du Pont had duly protested and appealed to the Secretary of the Treasury (R., pp. 9, 10).

Upon this presentation of facts defendant moved for judgment, *non obstante veredicto*, but his motion was denied, and thereupon he tendered a bill of exceptions (R, pp. 9–11).

Error assigned.

The judgment is erroneous in this, that it should have been for the defendant, upon the facts or case to which the verdict was subject.

Argument.

Section 4399, Revised Statutes, provides that—

> Every vessel propelled in whole or in part by steam shall be deemed a steam-vessel within the meaning of this title.

Section 4400, Revised Statutes, provides that—

> All steam-vessels navigating any waters of the United States which are common highways of commerce, or open to general or competitive navigation, excepting public vessels of the United States, vessels of other countries, and boats propelled in whole or in part by steam for navigating canals, shall be subject to the provisions of this title.

Section 4418, Revised Statutes, provides that "the local inspectors shall also inspect the boil-

ers of all steam-vessels before the same shall be used, *and once at least in every year thereafter.*" It then proceeds to specify, with great particularity, the mode in which boilers shall be tested.

Section 4421, Revised Statutes, provides that—

> When the inspection of a steam-vessel is completed and the inspectors approve the vessel and her equipment throughout, they shall make and subscribe a certificate to the collector or other chief officer of the customs of the district in which such inspection has been made, in accordance with the form and regulations prescribed by the board of supervising inspectors. Such certificate shall be verified by the oaths of the inspectors signing it before the chief officer of the customs of the district, or any other person competent by law to administer oaths. If the inspectors refuse to grant a certificate of approval, they shall make a statement in writing, and sign the same, giving the reasons for their disapproval.

Section 4499, Revised Statutes, under which the seizure was made, provides that—

> SEC. 4499. If any vessel propelled in whole or in part by steam be navigated without complying with the terms of this title, the owner shall be liable to

> the United States in a penalty of $500 for each offense, one-half for the use of the informer, for which sum the vessel so navigated shall be liable, and may be seized and proceeded against by way of libel in any district court of the United States having jurisdiction of the offense.

It is submitted that the term "*vessel*," as employed in the law regulating steam vessels, is *nomen generalissimum*, and intended to include craft of every kind propelled by steam.

Stormonth's Dictionary, an authoritative work, defines "vessel," in one of its acceptations, to be "a hollow structure made to float on water; a ship, in general."

According to Webster, a vessel is "any structure made to float upon the water, for purposes of commerce or war, whether impelled by wind, steam, *or oars;*" and according to the Imperial Dictionary it is "a ship; a craft of any kind, but usually one larger than a mere boat."

Surely, then, in view of these various definitions, it would be something strange in construing a statute made for the purpose of putting

safeguards around the use of so dangerous an agency as steam, to take the word "vessel" in a narrow, restricted sense.

It may be that the steamboat in question is not engaged in carrying passengers generally, but it is admitted by Mr. Du Pont in his testimony that he does carry workmen across the Delaware River in her. That is, however, immaterial, for the steamboat navigates the highways of commerce, and, when at her moorings, is necessarily near vessels of all sorts, and in either case, particularly the latter, an explosion of her boiler would be likely to produce loss of life in other vessels or on shore.

It is not easy, then, to see upon what plea or pretext it can be urged that the life-protecting regulations prescribed by law for the government of steam-vessels do not apply to all kinds of craft using steam as a motive power, and navigating waters subject to the jurisdiction of the United States.

But the steamboat in question was engaged in inter-State commerce, and for that reason, also, was subject to the regulations of Congress.

It is firmly established, that "commerce," as used in the Constitution, embraces, not only traffic, but *intercourse* and *navigation* (Gibbons *v.* Ogden, 9 Wh. 1).

That intercourse, not tinctured with traffic or business of any kind, is "commerce," is well exemplified by the laws of the United States regulating intercourse between our people and the Indian tribes, and, even, "individual members of such tribes" (U. S. *v.* 43 gallons of whisky, 93 U. S. 195; U. S. *v.* Holliday, 3 Wall., 417), it being well understood that "commerce" is the same thing, whether with foreign nations or among the States or with the Indian tribes. Any regulation, therefore, of intercourse with an Indian tribe or "individual members thereof," which is valid under the commercial power, would also be valid if applied to intercourse between the people of the several States, unless in conflict with some other provision of the Constitution.

It would seem, then, hardly to admit of question that the daily transit of the defendant in

error and his superintendent across the river Delaware and back between Chester, Pennsylvania and his powder-works at Thompson's Point, New Jersey, is inter-State commerce, being intercourse, and that, too, of a business kind; or that the steamboat in question, being the navigation by which that intercourse is carried on, is subject to the commercial power of Congress.

It is submitted, therefore, that the judgment should be reversed, with instructions to the court below to enter judgment for the defendant, the plaintiff in error.

WM. A. MAURY,
Assistant Attorney-General.

118 U.S. 228

Supreme Court of the United States.

OCTOBER TERM, A. D. 1885.

GEORGE S. WELLS, SAMUEL MYERSON, *et al.*,
vs.
JOSEPH WILKINS, Sheriff, &c. } No. 657.

OTTO GOLDSTUKER *et al.*
vs.
JOSEPH WILKINS, Sheriff, &c. } No. 658.

GEORGE S. WELLS, N. NICHOLS, *et al.*,
vs.
JOSEPH WILKINS, Sheriff, &c. } No. 659.

GEORGE S. WELLS, MARK FULLER, *et al.*,
vs.
JOSEPH WILKINS, Sheriff, &c. } No. 660.

GEORGE S. WELLS, JOHN WHITE, *et al.*,
vs.
JOSEPH WILKINS, Sheriff, &c. } No. 661.

GEORGE S. WELLS, JOHN WHITE, *et al.*,
vs.
JOSEPH WILKINS, Sheriff, &c. } No. 662.

In Error to the Circuit Court of the United States for the Northern District of Florida.

MOTION TO RE-INSTATE.

TUCKER AND THOMPSON, of Counsel for the Plaintiffs in Error.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1885.

GEORGE S. WELLS, SAMUEL MYERSON, *et al.*,
vs.
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JOSEPH WILKINS, Sheriff, &c. } No. 662.

In Error to the Circuit Court of the United States for the Northern District of Florida.

TUCKER AND THOMPSON, of Counsel for the Plaintiffs in Error.

And now come the plaintiffs in error and move the Court

to reinstate the foregoing cases numbered 657, 658, 659, 660, 661, 662, respectively, on the following grounds, to wit:

First. The affidavit taken by the defendant in error denying that the subject-matter in dispute was within the jurisdiction of this Honorable Court were taken *ex parte* and without any notice to the plaintiffs in error or their counsel of record.

Second. That the subject-matter in dispute is of such value as to give this Honorable Court jurisdiction, and that the plaintiffs in error were taken by surprise in not having notice of any intention on the part of defendant in error to deny the jurisdiction.

Third. The defendant in error having by [illegible] agreement submitted the case upon its merits, he is now estopped from raising any question of jurisdiction.

J. D. THOMPSON,
T. DE S. TUCKER,
of Counsel for Plaintiffs in Error.

ARGUMENT.

It will be observed that this is a motion to reinstate, very much in the nature of a petition for a rehearing. The difference being, that on a petition for a rehearing there must have previously been some judgment of the court on the merits of the case, and on a motion to reinstate no such judgment is necessary. In order to fully understand this motion, it will be necessary for the Court to examine very carefully the record from the beginning, or at least from the suing out of the writ of error to its dismissal. Upon examination, it will be found in the record at page 1, that this writ of error was taken at the March Term, A. D. 1884, of the Circuit Court of the United States for the Fifth Judicial Circuit, Northern District of Florida, sitting at Pensacola.

On suing out the writ the plaintiffs in error gave notice to the defendant in error of their intention to take testimony in relation to the value of the property in controversy so as to fix the jurisdiction of the Supreme Court.

Vide Record, pages 27 and 28.

The defendant in error appeared and the affidavits were taken and made a part of the Record, and there the question of jurisdiction ended. The cases were then brought here and regularly docketed, to be heard on the merits. Subsequent to the docketing of the cases, and since the meeting of this Court, agreements were regularly signed and filed here, submitting the cases to the Court. Since this submission, and without any order of Court or notice to the plaintiffs in error, the defendant comes in and files a number of affidavits, raising an entirely new question, to-wit, the question of jurisdiction. Upon this new phase of the cases the plaintiffs in error have never been heard, had no notice of such a movement or intention until the judgment of the Court dismissing the cases informs them. Can this be done? We contend that it cannot. The parties having been all before the Court, having been present when the jurisdiction was established, the defendant is forever after estopped from denying or in any way contesting the jurisdiction.

Vide Bigelow on Estoppel, p. 3.
Willard *vs.* Whitney, 49 Maine, 235.
Balch *vs.* Shaw, 7 Cushing, 282.
Chase *vs.* Walker, 26 Maine, 555.
Dunlap *vs.* Glidden, 34 Maine, 517.
Parker *vs.* Thompson, 3 Pickering, 429.

If it should be contended that this is not the proper course, but that a new writ of error should be sued out, we answer, that if all the parties had been present in Court, and the Court was not satisfied on the point of jurisdiction, the plaintiffs in error would have been entitled to a continuance

and for an order to take additional proof to sustain the jurisdiction.

United States *vs.* the Brig Union, 4 Cranch, 46.

And even if this motion was not the proper one, the cases having been dismissed improperly, this Court will adopt the most expeditious way of placing them again on the docket, which would be by a motion to reinstate.

J. D. THOMPSON,
T. DE S. TUCKER,
Of Counsel for Plaintiffs in Error.

The defendant in error will please take notice that on the 19th day of April, A. D. 1886, the foregoing motion will be called up for argument.

J. D. THOMPSON,
T. DE S. TUCKER,
Of Counsel for Plaintiffs in Error.

To Messrs. C. C. YONGE and E. A. PERRY,
Of Counsel for Defendant in Error.
MARCH 22, 1886.

And your petitioners further pray that if the Court grant this motion, that an order may issue for the recall of the mandates which have issued in the several causes.

ALEX. PORTER MORSE,
of Counsel.

Supreme Court of the United States.

OCTOBER TERM, 1885.

No. 254.

JAMES K. JOHNSON, WILLIAM J. CARO, ADMINISTRATOR OF E. J. CARO, MATILDA C. DUVAL, AND IRENE C. WILLIAMS, PLAINTIFFS IN ERROR,

vs.

JOSEPH WILKINS, SHERIFF, EX-OFFICIO ADMINISTRATOR DE BONIS NON OF THE ESTATE OF JAMES RUSHTON, DECEASED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

Motion to Reinstate and Decide Case on the Merits and to Recall Mandate.

ALEX. PORTER MORSE, of Counsel for Plaintiffs in Error.

And now come the plaintiffs in error and move the Court to reinstate the foregoing case, on the following grounds, to wit:

First. That the subject-matter in dispute is of such value as to give this honorable court jurisdiction, and that the plaintiffs in error were taken by surprise in not having notice of any intention on the part of defendant in error to deny the jurisdiction.

Second. The defendant in error having by his agreement submitted the case upon its merits, he is now estopped from raising any question of jurisdiction.

In support of the motion to reinstate plaintiffs in error respectfully refer to the brief and affidavits filed in this court heretofore, to wit, on Monday, the 19th day of April, 1886, in cases numbered 657, 658, 659, 660, 661, and 662, which relate, in part or in whole, to a like controversy where the real parties at interest are the same, and which grow out of the same subject-matter as the foregoing case.

In addition to cases therein cited plaintiffs in error refer to *Whiteside* vs. *Haselton and others*, 110 U. S., p. 296.

And plaintiffs in error further pray that if the court grant this motion that an order may issue for the recall of the mandate heretofore issued in this cause.

ALEX. PORTER MORSE,
Of Counsel for Plaintiffs in Error.

WASHINGTON, D. C., *April* 26, 1886.

FILED
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JAMES H. MCKENNEY
CLERK

Supreme Court of the United States.

OCTOBER TERM, A. D. 1886.

First. That the subject-matter in dispute is of such value as to give this honorable court jurisdiction, and that the plaintiffs in error were taken by surprise in not having notice of any intention on the part of defendant in error to deny the jurisdiction.

Second. The defendant in error having by his agreement submitted the case upon its merits, he is now estopped from raising any question of jurisdiction.

In support of the motion to reinstate plaintiffs in error respectfully refer to the brief and affidavits filed in this court heretofore, to wit, on Monday, the 19th day of April, 1886, in cases numbered 657, 658, 659, 660, 661, and 662, which relate, in part or in whole, to a like controversy where the real parties at interest are the same, and which grow out of the same subject-matter as the foregoing case.

In addition to cases therein cited plaintiffs in error refer to *Whiteside* vs. *Haselton and others*, 110 U. S., p. 296.

And plaintiffs in error further pray that if the court grant this motion that an order may issue for the recall of the mandate heretofore issued in this cause.

ALEX. PORTER MORSE,
Of Counsel for Plaintiffs in Error.

WASHINGTON, D. C., *April* 26, 1886.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1885.

No. 657.
GEORGE S. WELLS, SAMUEL MYERSON, et. al.
vs.
JOSEPH WILKINS, Sheriff, &c.
No. 658.
OTTO GOLDSTUKER, et. al.
vs.
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GEORGE S. WELLS, N. NICHOLS, et. al.
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vs.
JOSEPH WILKINS, Sheriff, &c.
No. 662.
GEORGE S. WELLS, JOHN WHITE, et. al.
vs.
JOSEPH WILKINS, Sheriff, &c.

In Error to the Circuit Court of the United States for the Northern District of Florida.

MOTION TO RE-INSTATE.

Brief of C. C. YONGE, SR., of Counsel for Defendant in Error.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1885.

No. 657.
GEORGE S. WELLS, SAMUEL MYERSON, et. al.
vs.
JOSEPH WILKINS, Sheriff, &c.
No. 658.
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JOSEPH WILKINS, Sheriff, &c.
No. 662.
GEORGE S. WELLS, JOHN WHITE, et. al.
vs.
JOSEPH WILKINS, Sheriff, &c.

In Error to the Circuit Court of the United States for the Northern District of Florida.

MOTION TO RE-INSTATE.

Brief of C. C. YONGE, SR., of Counsel for Defendant in Error.

The above stated cases were submitted on Brief during the present term of the court and were dismissed for the want of jurisdiction as to the value of the property in controversy.

I see nothing in the Brief of the plaintiffs in Error in sup-

port of their motion to reinstate the cases, requiring reply, except to deny the statement that there was any agreement to submit the cases on their *merits*.

The stipulation filed is in these words (I speak from memory): "Submitted for *dismissal*, affirmancy, reversal or such other judgment as the court may make." The *dismissal* of the cases, referred to the contemplated motion to dismiss for want of jurisdiction.

But had there been an attempt to waive jurisdiction, of course it would have been ineffectual. I do not know whether the plaintiffs in error have filed affidavits as to the value of the property in controversy. If they have, contradictory affidavits can be procured, from the most reputable citizens of Pensacola where the property is situated, without limit.

It will be noticed that the affidavits filed by the defendant in error, in support of the motion to dismiss for want of jurisdiction are chiefly by real estate brokers in the city of Pensacola, persons who are better qualified to testify as to the value of real estate than any other class. I think they include all the real estate dealers in Pensacola of any note.

C. C. YONGE, SR.,
Attorney for Defendant in Error.

Office Supreme Court U. S.
FILED.
APR 19 1886
JAMES H. McKENNEY,
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1885.

GEO. S. WELLS ET AL. *vs.* WILKINS, ADMINISTRATOR.

Personally appeared before me, M. P. de Rioboo, a notary public in and for the county of Escambia, State of Florida, George S. Wells, a citizen of said county and State, and who is personally known to him, and who, being duly sworn, deposes and says:

That he is a party to the suits in the Supreme Court of the United States numbered from 657 to 662, inclusive of both, and that the property involved in suit No. 254, formerly occupied by J. K. Johnson *et al.*, was purchased by him from the grantee, holding from Caro's heirs—*i. e.*, A. V. Caro, Nancy L. Caro, Irene C. Williams, and Matilda C. Duval—the same being the whole of lot one, square four, according to the Pintardo plan of the city of Pensacola, Florida, and fractional parts of which lot are sued for in the several cases numbered from 657 to 662, inclusive, and that he procured the writs of error which caused these cases, No. 254, as well as 657, 658, 659, 660, 661, and 662, to be sued out, being the real party in interest, and being in possession, as landlord, of said property for 80 feet front on Palafox street and for a depth of 82 feet 6 inches, under a writ of possession of the circuit court of the United States in favor of the Caro heirs, sued in case No. 254 in the year 1883; that he employed Messrs. Elliott, Tucker, and Thompson, during the lifetime of Elliott, now deceased, as counsel, and paid them their full fee for their professional services in all of these cases to cover all services to be by them in any manner performed in these cases; that he was assured by his said counsel that all the necessary steps had been taken to put the cases upon their merits before the Supreme Court; that he employed said firm for the purpose of having the

services of its leading member, Hon. R. B. Elliott, but that on his decease the cases continued in the hands of Tucker & Thompson, who have been paid the full fees agreed upon, except a promised contingent fee, predicated upon a successful issue of the case in the Supreme Court; that this affiant has never authorized his counsel, or any one else, to make any agreement to submit said cases under the 20th Rule of the Supreme Court of the United States, except upon their merits; that he was assured by his said counsel, time and again, that under an agreement which was authorized the Court had full jurisdiction in all these cases, No. 254 as well as the others, and that the cases had been consolidated so as to make the value of the property involved immensely greater than the $5,000 required to give the Court jurisdiction, and that said counsel has furthermore, time and again, declared that he has never received notice of a motion to dismiss these cases in compliance with Rule 6, Sec. 4, nor accepted service of such motion or any other motion, as alleged in the motion to dismiss; yet, nevertheless, said counsel, J. D. Thompson, refuses to make affidavit thereto for the purpose of supporting the petition to reinstate these cases, and, as this affiant believes, because he has declined to give said counsel his promissory note for $150, which sum said affiant does not owe and never has promised to pay to said counsel. Furthermore, this affiant says that he has never received notice of motion to dismiss as required by Rule 6, section 4, nor has he ever accepted service, nor has any of the other parties joined in these cases as plaintiffs in error, as he is informed by them and as he believes.

This affiant says that he is confident that his said counsel has, if not from fraud and collusion, at least through criminal neglect and gross carelessness and ignorance, prejudiced his rights and interests by failing in case No. 254 to have the record show the value of lot one, square four, which, by affidavits herewith connected, has been shown to be worth from thirty to thirty-five thousand dollars; and by entering into an agreement with the attorneys of the defendants in error, in defiance of instructions to submit these cases "for such judgment as the court may render either of *dismissal*, affirmance, reversal, or otherwise, on briefs," by agreeing that William J. Caro, who has never been administrator of E. J. Caro, deceased, should be substituted for said E. J. Caro, upon suggestion of his death, as administrator; that

said Tucker and Thompson are regularly admitted attorneys of the United States circuit court and Thompson an attorney of the United States Supreme Court, and that for the reason that they had been so admitted to practice law and were *quasi* officers of the court this affiant acted upon the presumption that they would serve his interests with integrity, and had sufficient knowledge of law to protect his interests, the both of which he is now confident that they do not possess.

This affiant says that he has received a copy of the brief of C. C. Yonge, Sr., in cases No. 657 *et sequitur*, from the clerk of the Supreme Court, after dismissal, in which were printed certain affidavits of W. H. Knowles, Peter Knowles, Wm. Fisher, J. C. Pebby, and T. C. Watson, and Francis Walsh, valuing the lots involved in this case, which affidavits purport to have been taken in Pensacola on December 31st, 1885, and January 1st, 1886, and which consequently could not have been filed in the clerk's office in the city of Washington prior to January 1st, 1886; that he is, furthermore, informed and he believes that, except in the instances in which those affiants are interested in destroying the validity of a title of Gabriel Rivas, precisely on all fours with that involved in these cases, and consequently are not impartial witnesses as to value, &c., they have been misled and are mistaken as to the value because mistaken as to the precise locality of the property involved in each case. Indeed, the property described in the judgment in the case No. 657 is located on the opposite side of Palafox street from lot one, square four, although it is described as part of lot one, square four, yet is made to start from a point on the east side of Palafox instead of the west side. Affiant has procured the affidavits of Jno. M. Tarble, ex-mayor and ex-collector of customs; Elwood Haines, ex-mayor and ex-county surveyor; W. A. S. Wheeler, cashier of the First National Bank of Pensacola; J. B. Walton, ex-tax collector, and Wm. Hudson, a wealthy citizen, whose place of business is very little removed from the property in question, all of whom are absolutely impartial, who place such valuation on the property as would seem to fix the value beyond the sum of five thousand dollars, irrespective of a claimed riparian right, which established would greatly enhance its value. Affiant protests that he does not wish to hold this property unless his title is perfect, but that he regards the

same as worth much more than five thousand dollars in the several cases, and does not believe that he has heretofore had a fair opportunity to establish this jurisdictional value. Affiant has received a copy of the motion to dismiss from the clerk's office, sent to him subsequently to the order of dismissal, which motion states to the court that service of notice of motion has been acknowledged, whereas such service has not been acknowledged, as he is informed and believes and is informed and advised by his attorney in Washington, D. C.; that no such paper showing such acknowledgment of service is, or ever has been, on file with the papers in the cases filed in the clerk's office, and that he believes that counsel for the defendant in error purposely and deliberately misled the court with a view to securing the dismissal of said cases and preventing their adjudication on the merits; that *aliunde* to these cases said counsel, C. C. Yonge, Sr., is largely and deeply pecuniarily interested in destroying the validity of titles to property emanating from Gabriel Riva, the ancestor of the Caro heirs, from whom, the agent or grantee, affiant purchased lot one, square four, subject, of course, to inchoate rights of Chas. W. Jones, now United States Senator, and E. A. Perry, now Governor, arising under an agreement, an original duplicate of which, duly identified and proven, accompanies the affidavits herein mentioned elsewhere, and that said Edward A. Perry, Governor, who, as attorney, had signed an agreement to defend the title of the Rivas heirs to this property, is the same E. A. Perry who is of counsel for the defendants in error in these cases, having changed front to rear on first company, although never discharged from his obligation to the Rivas heirs by A. V. Caro, agent for the Rivas heirs, or by them personally, as this affiant is informed and believes.

This affiant further declares that, while he has personally and solely, unassisted by any other of the parties to these suits, expended many hundreds of dollars in fees to his said counsel, and in costs of court, that his rights have been grossly sacrificed at least from ignorance and sloth, if not from corruption; that he honestly believes that the court would never have dismissed said cases if the actual facts as to the value had been presented to it, and that, except Jas. K. Johnston, tenant in 1883, who now resides in Texas, and S. Myerson, who is dead, he has authority to ask the court, through A. Porter Morse, Esq., his counsel and theirs, for all

the parties joined in the several cases, for a reinstatement of these cases that they may be heard and determined upon the merits as made to appear in the records on file, as to the merits of the titles of the conflicting claimants of the property involved in these suits.

GEO. S. WELLS.

Sworn to and subscribed before me this 12th day of April, A. D., 1886.

[SEAL.] M. P. DE RIOBOO,
Notary Public, Escambia Co., Florida.

Personally appeared before me, M. P. de Rioboo, a notary public in and for Escambia county, State of Florida, A. Goldstucker, Mark Fuller, N. Nichols, John White, and Henry Muller, all of whom are personally known to me, who, being duly sworn, depose and say that they never received notice of motion to dismiss in cases No. 657 to 662, inclusive, in the Supreme Court of the United States, nor acknowledged any such service, nor authorized any one to do so for them, and that they have given George S. Wells, the real party in interest therein, the authority to have filed by his attorney a petition to reinstate these cases on these and other grounds, and to employ Alex. Porter Morse, Esq., as such attorney to represent them in such petition, in so far as their authority is needful to such employment and service.

MARK FULLER.
A. GOLDSTUCKER.
JOHN WHITE.
his
N. x NICHOLS.
mark.
H. MULLER.

Sworn to and subscribed before me this 12th day of April, A. D. 1886.

[SEAL.] M. P. DE RIOBOO,
Notary Public, Escambia Co., Fla.

Personally appeared before me, M. P. de Rioboo, a notary public in and for the county of Escambia and State of Florida, John M. Tarble, personally known to me, and who is a citi-

zen of Pensacola, Florida, in said county and State, who, being duly sworn, deposes and says that he has been a citizen of Pensacola for the last twelve years or more; that for a considerable length of time he was engaged in business as a ship chandler on Palafox wharf, at the foot of Palafox street, and south of lot one, square four, as marked on the Pintardo plan of the city of Pensacola; that for two years he was mayor of the city of Pensacola, and that in the summer of 1882 he was made the collector of customs of the port of Pensacola, which office he continued to hold until the summer of 1885.

He furthermore says that he has taken pains to make himself familiar with values of property, personal and real, in said city and port, and that it was especially his duty, in the honest desire to honestly serve the Government of the United States while in the office of collector of customs in the year 1883, to inquire as to and intelligently ascertain the minimum market price of lots on Palafox street and in its vicinity, for the reason that the Secretary of the Treasury authorized him to import parties in reference to the purchase or sale of real estate, with a view to selecting the most eligible site for the United States custon-house, post office, and court building.

He furthermore deposes that the diagram hereto attached exhibits substantially the location of the "custom-house, post office, and court-house buildings," as well as that of the Pitt Building, the Guttmann Building, the Hernandez strip of lot, and also lot one, square four, of the city of Pensacola, Florida, which is now claimed by Geo. S. Wells, and as to the value of which this affidavit is invoked.

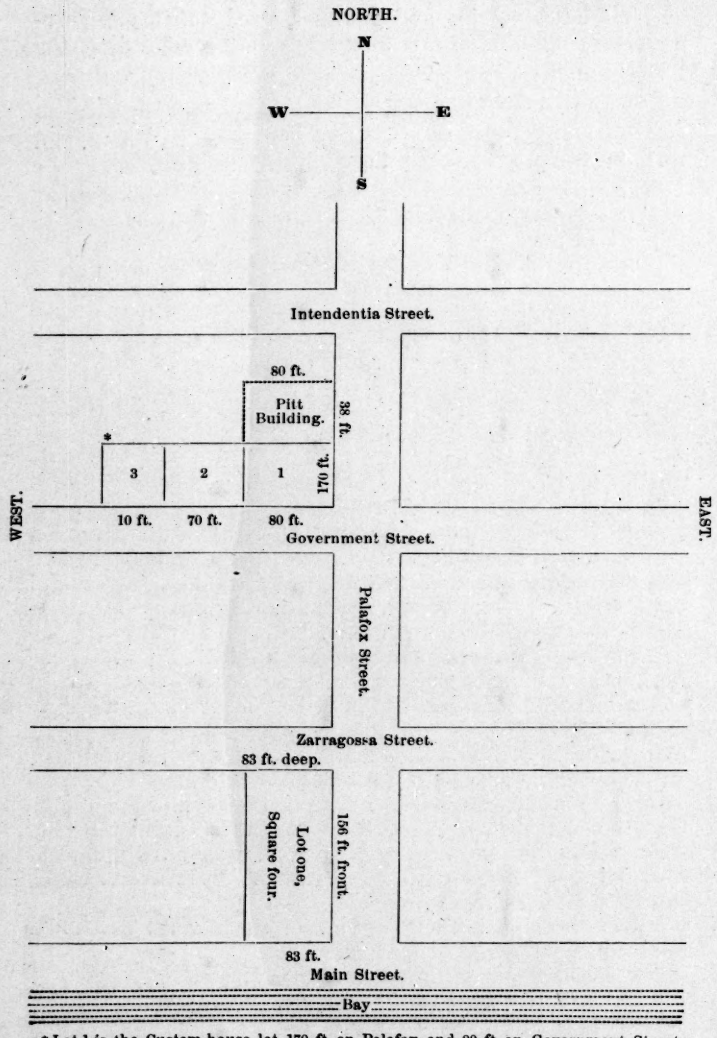
He further deposes that he was offered by a responsible party, in cash, the sum of $25,000 for the custom-house lot, at the junction of Palafox and Government streets, the northwest corner of the said streets, which lot was 170 feet front on Palafox and 80 feet on Government, and this in the year 1883; that he purchased the lot, *diagramed* as the Guttmann lot, stripped of the building, *as a bare lot*, for the Government of the United States for the sum of $18,000; this purchase fronted on Government street 70 feet, and was 170 feet deep; and he paid for it no more than its cash market minimum value; that he was offered the "Hernandez strip of lot" for the sum of $1,500, which strip fronted 10 feet on Government and was 170 feet deep, but that he declined to

purchase at that price, and finally secured it for the Government of the United States for the sum of $1,000. As to the Pitt Building, at one time it seemed advisable to purchase it, and under instructions from the Treasury Department I priced it, but obtained only the offer from Mr. Pitt to sell for $15,000, and this lot fronts only 38 feet on Palafox, and is only 80 feet deep. I offered him $12,000, which he declined.

Furthermore, regardless of any possible enhancement of value that may attach to lot one, square four, according to the Pintardo plan of the city of Pensacola, from its riparian situation, but viewing it only and isolatedly as a corner lot in the path of profitable traffic, and exercising the most discreet judgment, based upon former and present values of property in propinquity to said lot one, square four, and eliminating from this judgment all speculative or prospective future enhancements of value, this deponent unhesitatingly says that this lot one, square four, claimed by Geo. S. Wells, under deed from the Caro heirs, who claim to be the heirs of Gabriel Rivas, and which is the property involved in certain suits in ejectment, is quite as desirably situated as is the property of the Government of the United States known as the custom-house lot, and that he thinks and believes, and is convinced by his most mature deliberation, that the said lot is worth the sum of thirty thousand or thirty-five thousand ($30,000 or $35,000) dollars.

And, lastly, this affiant says that in all the real estate transactions and negotiations for the Government of the United States, heretofore alluded to in this affidavit, his purchases and his offers of sale or of purchase were predicated upon the bare lots, stripped of all tenements, or habitations, or buildings, or appurtenances, or improvements of all sorts whatever; whereas lot one, square four, has upon it certain tenements, and that it is for this reason that this affiant fixes a higher value upon lot one, square four, than was fixed upon the bare custom-house lot, two blocks north of said lot, for which lot he declined $25,000.

And subjoined is the diagram of the several properties mentioned in this affidavit:



* Lot 1 is the Custom house lot, 170 ft. on Palafox and 80 ft. on Government Street; lot 2 is the Guttman lot, 70 ft. on Government and 170 ft. deep, and lot 3 is the Hernandez strip, 10 ft. on Government and 170 ft. deep.

This affiant includes this diagram, not as mathematically accurate in its exhibition illustrative of the relative situation of lots, but only to demonstrate propinquity and size, and size will need to be ascertained by the figures showing frontage and depth, and not from the diagram. The figures are from the present copies of the Pintardo plan.

And further the affiant says no more, save that, without favor or partiality or reward, or hope of reward, he has made this affidavit.

JOHN M. TARBLE.

Sworn to and subscribed before me this 9th day of April, A. D. 1886.

[SEAL.]

M. P. DE RIOBOO,
Notary Public,
Escambia Co., Fla.

Personally appeared before me, M. P. de Rioboo, a notary public in and for the county of Escambia and State of Florida, John B. Walton, who is personally known to me and who is a citizen of the city of Pensacola, Florida, being duly sworn, deposes and says that he has been a citizen of Pensacola since 1876; that he has been in business in said city for nearly that entire period, and for a long time nearly opposite to the southeast corner of lot one, square four, of said city, as marked on the Pintardo plan of said city; that he has served said city as its tax collector for two years, and that he has a general knowledge of the value, actual and intrinsic, of real estate in said city's limits.

He further deposes that he has read the affidavit of ex-Collector of Customs John M. Tarble, to which this affidavit is attached, and that he entirely concurs with said Tarble in his estimate; that the said lot is fully worth from thirty thousand to thirty-five thousand dollars, and for similar reasons; and he believes that it is worth that sum void of all structures and improvements.

Furthermore the affiant says that the corner lot, 41½ feet front on what is called Main street and 36 feet front on Palafox street, which he is informed is sued for in the case of G. S. Wells, Mark Fuller, and others, plaintiffs in error,

against the administrator of James Rushton, deceased, defendant in error, provided the title to the same were perfect, it being a part of lot one, square four, of the city of Pensacola, would of itself be worth at least six thousand dollars, because he regards this particular corner part of lot one, square four, as the best site in Pensacola for a saloon, restaurant, &c., and diagonally from it on Pensacola street is situated Johnson's Tivoli saloon, not more eligible or valuable, for which its owner has, as declared by Johnson, refused to sell for ten thousand dollars.

And further the affiant says no more, save that without favor or partiality or reward or hope of reward, but only in the interest of right and justice, he has made this affidavit.

JOHN B. WALTON.

Sworn to and subscribed before me this 9th day of April, A. D. 1886.

[SEAL.] M. P. DE RIOBOO,
Notary Public, Escambia Co., Fla.

Personally appeared before me, M. P. de Rioboo, a notary public in and for the county of Escambia and State of Florida, William Hudson, personally known to me, who, being duly sworn, deposes and says that he has been a citizen of Pensacola for the last fifteen years or more, and that he knows the location of lot one, square four, according to the Pintardo plan of said city; that his place of business is within one hundred and fifty yards of said lot, and that he has known the value of property in that vicinity for many years.

Furthermore he deposes that he regards said lot one, square four, worth at least thirty-five or forty thousand dollars, and that the corner lot, fronting 41½ feet on what is called Main street and 36 feet front on Palafox street, is fully worth more than five thousand dollars, and I would give that sum for it if perfect title could be made.

And he moreover deposes that his opinion is formed upon knowledge as to the value of property in other parts of the city, and especially in this locality.

And the affiant deposes that he is not moved to make this affidavit by favor or reward or hope of reward or from any other than an impartial desire to promote the ends of justice.

WILLIAM HUDSON.

Sworn to and subscribed before me this 10th day of April, A. D. 1886.

[SEAL.] M. P. DE RIOBOO,
Notary Public, Escambia Co., Fla.

Personally appeared before me, M. P. de Rioboo, a notary public in and for the county of Escambia and State of Florida, Elwood Haines, personally known to me, who, being duly sworn, deposes and says that he has been a citizen of the city of Pensacola, Florida, for over twenty years; that he was mayor of said city during the year 1872; that he was also for several years an alderman of said city, and that he was county surveyor of Escambia county, Florida, from 1866 to 1870, and is acquainted with localities in the city of Pensacola; that he knows the location of lot one, square four, according to the Pintardo plan of said city; that he has knowledge of the value of real estate on Palafox street, in Pensacola, and that lot one, square four, according to the Pintardo plan of said city, is worth at least thirty-five thousand dollars, and that the part of said lot on the corner fronting 41½ feet on what is called Main street and 36 feet front on Palafox street is worth, with a clear title, more than five thousand dollars, and this opinion is based upon the fact that he feels confident that it would sell for that sum in open market.

And this affiant deposes that he is not moved to make this affidavit by favor or reward, or hope of reward, or from any other than an impartial desire to promote the ends of justice.

ELWOOD HAINES.

Sworn to and subscribed before me this 10th day of April, A. D. 1886.

[SEAL.] M. P. DE RIOBOO,
Notary Public, Escambia Co., Fla.

The undersigned, E. A. Perry and C. W. Jones, hereby agree to and with the undersigned, heirs of Gabriel Rivas, deceased, as follows:

1st. The said E. A. Perry and C. W. Jones agree to render whatever professional services that may be necessary in connection with the establishment of the legal rights of the said heirs, in and to a lot or parcel of ground in the city of Pensacola (and on Palafox street), known as lot number one,

with the appurtenances thereunto belonging, against all persons claiming the same in the said city of Pensacola, to defend all suits which may be brought against the said heirs, or any one holding under them, for or on account of said property or of any interest arising therefrom.

2d. In consideration of the services already rendered and those which may yet be performed by the said E. A. Perry and C. W. Jones in connection with the said property the undersigned heirs of the said Gabriel Rivas agree to convey and transfer and assign one-half of the said property, with a like proportion of the issues, profits, and advantages arising from the same.

E. A. PERRY.
C. W. JONES.

May 10th, 1873.
[Signed in duplicate.]

A. V. CARO,
Agent for Rivas Heirs.

Witness: E. MCCUMM.

Personally appeared before me, M. P. de Rioboo, a notary public in and for the county of Escambia and State of Florida, A. V. Caro, to him personally known, who, being duly sworn, deposes and says:

That in the year A. D. 1873, and on the 10th day of May of that year, he was the duly-authorized agent of the Rivas heirs—*i. e.*, the heirs of Gabriel Rivas, dec'd—and as such agent had a full power of attorney, and that the paper hereunto attached, signed by E. A. Perry, C. W. Jones, and A. V. Caro, agent for Rivas' heirs, was executed in his presence; that he saw E. A. Perry and C. W. Jones sign the same, and that this paper is marked "Signed in Duplicate," in the handwriting of E. A. Perry; that said E. A. Perry, the present Governor of Florida, is the same E. A. Perry who is now, in the Supreme Court of the United States, the attorney of record, together with C. C. Yonge, Sr., for the defendants in error, in cases Nos. 254, 657, 658, 659, 660, 661, and 662, and that the property involved in those cases, especially that in case No. 254, is the very identical property which said C. W. Jones, now a United States Senator from Florida, and E. A. Perry, now Governor of Florida, undertook to defend all suits against for the Rivas heirs, or any one holding under them.

ALBERT V. CARO.

Sworn to and subscribed before me this 10th day of April, A. D. 1886.

[SEAL.] M. P. DE RIOBOO,
Notary Public, Escambia Co., Fla.

Personally appeared before me, M. P. de Rioboo, a notary public in and for the county of Escambia and State of Florida, W. A. S. Wheeler, personally known to me, who, being duly sworn, deposes and says that he is a citizen of Pensacola, Escambia county, Florida; that he has endeavored by all legitimate means to make himself familiar with the values of property in said city; that he knows the locality of lot one, square four, according to the Pintardo plan of said city, which square four is sometimes called block four, and that he knows its marketable value as compared with other property in said city and in this same vicinity, and that he knows that part of said lot which corners on Palafox street and what is called Main street, with a frontage on Palafox street of 36 feet and a frontage on the so-called Main street of 41½ feet, which covers the property sued by the Rushton adm'r against Geo. S. Wells, Mark Fuller, and others, and the Caro heirs and their assigns, and which Caro heirs and their assigns claim under Gabriel Rivas.

Furthermore, he deposes and says, under oath, that he values the whole of lot one, square four, at the sum of at least twenty-five thousand dollars, and the corner part hereinabove especially described as worth more than five thousand dollars to any one who could secure for it a perfect title.

And this affiant adds that he is not moved to the making of this affidavit by any partiality, favor, reward, hope of reward, direct or remote, but only to promote the ends of justice.

W. A. S. WHEELER.

Sworn to and subscribed before me this 10th day of April, A. D. 1886.

[SEAL.] M. P. DE RIOBOO,
Notary Pumblic, Escambia Co., Fla.

Personally appeared before me, M. P. de Rioboo, a notary public in and for the county of Escambia, State of Florida, A. V. Caro and L. W. Rowley, both personally known to

me, who, being duly sworn, depose and say that on two occasions, in the presence of Geo. S. Wells, his attorney, J. D. Thompson stated to him that he would make affidavit that he had never received as such attorney, or otherwise, any notice in compliance with the requirements of rule 6, subdivision 4, of the Rules of the United States Supreme Court, of a motion to dismiss in case 254, or in cases 657, 658, 659, 660, 661, and 662 therein pending, and that he had never acknowledged service of such motion, and that said case was dismissed without his knowledge or consent; that such motion would be made upon any affidavits not in the printed record in these cases on file in Washington, and that before so dismissed he never received or was apprised of the contents of the brief of C. C. Yonge, Sr., of counsel, in such cases, for defendant in error.

ALBERT V. CARO.
L. W. ROWLEY.

Sworn to and subscribed before me this 12th day of April, A. D. 1886.

[SEAL.]

M. P. DE RIOBOO,
Notary Public, Escambia Co., Fla.

Supreme Court of the United States.

OCTOBER TERM, 1885.

Nos. 657, 658, 659, 660, 661, 662.

GEORGE S. WELLS ET AL.

vs.

JOSEPH WILKINS, SHERIFF, &c.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

Personally appeared before me, M. P. de Rioboo, a notary public in and for the county of Escambia and State of Florida, George S. Wells, a citizen of said county, personally known to me, who, being duly sworn, deposes and says that he has made diligent inquiry as to the whereabouts of Francis Walsh and B. C. Willis, whose affidavits, after notice duly served on C. C. Yonge, Sr., and E. A. Perry, attorneys for the administrator of the estate of James Rushton, were taken as to the value of property involved in cases Nos. 657, 658, 659, 660, 661, and 662, pending in the United States Supreme Court, and that he is informed, has ascertained, and confidently believes that said Francis Walsh is now located in the State of Pennsylvania, either temporarily or